IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8930 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHORBHAI C PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8930 of 2002
MR VC VAGHELA for Petitioner No. 1-4
MR HN SOMPURA, AGP for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/12/2002

ORAL JUDGEMENT

Rule. Mr HN Sompura, learned AGP waives service of Rule for respondent Nos. 1 to 3.

2. What is challenged in this petition under Article

226 of the Constitution is the order dated 7.2.2002 (Annexure "B") passed by the Director of Agricultural Marketing and Rural Economy, Gujarat State, as confirmed by the State Government by order dated 9.8.2002 (Annexure "A") under Section 48 of the Gujarat Agricultural Produce Markets Act, 1963, directing the District Registrar of Co-operative Societies, Ahmedabad (Rural) to file suit against the Chairman of the Dehgam Agricultural Produce Market Committee and the members of the sub-committee which was constituted for selecting land for construction of the vegetable sub-market of the Dehgam APMC at Bahiyal. The aforesaid order has been passed on the ground that although the banakhat for purchasing the land in question was executed on 22.4.1998, on account of the inordinate delay in not purchasing the land and getting it mutated in the name of the APMC, the APMC has suffered loss of interest on the amount of Rs.12,71,000/-.

3. Mr Vaghela, learned counsel for the petitioners points out that the APMC had constituted a sub-committee for selecting and purchasing the land and for constructing the vegetable sub-market at Bahiyal on 27.3.1998 and the sub-committee had acted promptly and the banakhat was executed in favour of the APMC on 22.4.1998. However, thereafter, two of the Directors had objected to the sale and had even approached the Director of Agricultural Marketing and Rural Finance, respondent No. 2 herein, who granted stay against the execution of the sale deed. That interim stay order came to be vacated only on 15.5.1999 upon dismissal of the appeal filed by the said two Directors. Since the land in question was an agricultural land and the construction was to be put up, the APMC had to obtain permission of the Collector under Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 which permission was applied for on 5.7.1999 (Annexure "E"), but the Collector took considerable time and granted the permission under Section 63 of the aforesaid Act only on 28.3.2002 (Annexure "H"). It is, therefore, submitted that there was no delay on the part of the petitioners and, therefore, the Director was not at all justified in passing the impugned order dated 7.2.2002 (Annexure "B") nor was the State Government justified in dismissing the petitioners' revision application under Section 48 of the Act.

4. Having heard the learned counsel for the parties, it appears to the Court that when the application under Section 63 of the Act was already made on 5.7.1999 and it was the Collector who took about 30 months' time to grant the permission on 28.3.2002, the respondent authorities

were not justified in finding fault with the petitioners for the said delay of 30 months. Even for the period prior to 5.7.1999, respondent No.2-Director of the Agricultural Marketing and Rural Finance himself had granted stay which was operating for a few months and taking an overall view of the matter, it appears to the Court that the impugned order dated 7.2.2002 passed by the Director as confirmed by the State Government by order dated 9.8.2002 in revision suffers from non-application of mind and deserves to be set aside.

5. The petition is accordingly allowed and the order dated 7.2.2002 (Annexure "B") passed by the Director of Agricultural Marketing and Rural Economy, Gujarat State, as confirmed by the State Government by order dated 9.8.2002 (Annexure "A") are hereby quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-